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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

COPY

JAN 22 2003

OFFICE OF
MANAGING DIRECTOR

Walter H. Sonnenfeldt
Walter Sonnenfeldt & Associates
14732 Jaystone Drive
Silver Spring, Maryland 20905

Re: Request for Waiver of Extension of
Construction Authorization Application Fee
Fee Control No. 00000RROG-03-007

Dear Mr. Sonnenfeldt:

This is in response to your request dated September 30, 2002 on behalf of ORBCOMM LLC and ORBCOMM License Corp. (ORBCOMM) to defer and waive any fees that may be associated with the submission of its "Request for Extension of Launch Authority" (the "ORBCOMM request"). The ORBCOMM request seeks extension of performance milestones associated with the FCC authorization for the ORBCOMM NVNG mobile satellite service system, issued under FCC Call Sign S2103. You argue that the regulatory fees will be a financial hardship because ORBCOMM operates on a negative cash flow basis.

In support of this statement, you incorporate by reference a declaration from Don Franco, ORBCOMM's Chief Financial Officer, that you submitted under separate cover in support of a petition to waive ORBCOMM's FY 2002 regulatory fees. In the separate filing, you requested that we provide confidential treatment to this declaration. Pursuant to Section 0.459(d)(1) of the Commission's rules, 47 C.F.R. 0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your petition is received, you will be notified and afforded the opportunity to respond at that time.

Section 1.1117 of the Commission's Rules, 47 C.F.R. Section 1.1117, provides that filing fees may be waived upon a showing of good cause and a finding that the public interest will be served thereby. See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 3558, 3572-73 (1990). We believe that the criteria the Commission has set forth for regulatees to establish financial need in the regulatory fee context is applicable to filing fees as well. The Commission grants waivers or reductions of its regulatory fees in those

instances where a "petitioner presents a compelling case of financial hardship." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995). The Commission further held that regulatees can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

10 FCC Rcd at 12761-12762.

In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, and payments to principals reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

The pleading and supporting declaration did not provide this information. In the absence of appropriate documentation, you have failed to establish a compelling case of financial hardship. Therefore, your request for waiver of ORBCOMM's filing fee is dismissed. Payment of ORBCOMM's filing fee is now due. The fee should be filed together with FCC Forms 701 and 159 (copies enclosed) within 30 days from the date of this letter. In view of your allegations of financial hardship, however, in lieu of payment, you may refile OBCOMM's request together with appropriate supporting documentation and a request to further defer payment of the fee, within 30 days from the date of this letter.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



for Mark A. Reger
Chief Financial Officer

Enclosures

000002206-03-007

COPY

WALTER SONNENFELDT & ASSOCIATES

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RECEIVED

September 30, 2002

SEP 30 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND DELIVERED

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB-204
Washington, D.C. 20554

Re: ORBCOMM NVNG MSS System
FCC Call Sign S2103

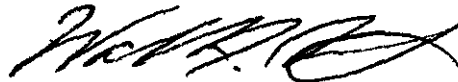
Petition For Fee Waiver

Dear Ms. Dortch:

Respectfully transmitted herewith, on behalf of our clients ORBCOMM LLC and ORBCOMM License Corp., is an original and four(4) duplicate copies of a submission to be directed to Mr. Andrew S. Fishel, the Commission's Managing Director. Also enclosed as the top copy of this package, is a fifth duplicate copy to be date-stamped and returned to our courier.

Kindly direct any inquiries concerning this submission to the undersigned.

Very truly yours,



Walter H. Sonnenfeldt
Counsel to ORBCOMM LLC &
ORBCOMM License Corp.

Enclosures (5)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 30 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)

ORBCOMM NVNG MSS System)
FCC Call Sign S2103 – Request For)
Filing Fee Waiver In Connection With)
Submission Of Request For Extension Of)
of Launch Authority)

File No. _____

FRN Nos. 0004-9524-79 & 0004-3792-02)

To: The Managing Director

PETITION FOR FEE WAIVER DUE TO FINANCIAL HARDSHIP

Pursuant to Section 1.1117 of the Commission's Rules, 47 C.F.R. 1.1117, and Section 158(d)(2) of the Communications Act of 1934 (as amended), 47 U.S.C. 158(d)(2), ORBCOMM LLC and its wholly-owned subsidiary ORBCOMM License Corp. (collectively "Petitioner"), by their undersigned counsel, hereby petition the Commission for waiver of any fees that may be associated with the submission of the above-referenced concurrently-filed 'Request For Extension of Launch Authority' (the "ORBCOMM Request").¹ As demonstrated herein, good cause exists for the fee relief requested herein, and the public interest will be well served by grant of the instant petition.

The ORBCOMM Request seeks extension of performance milestones associated with the FCC authorization for the ORBCOMM NVNG mobile satellite service system (the "ORBCOMM System"), issued under FCC Call Sign S2103 (the "License"). Petitioner acquired

¹ By a separate concurrently-filed submission, Petitioner is also requesting a deferral of any applicable fee payments relating to the subject submission, pending Commission disposition of the instant Petition For Fee Waiver. 47 C.F.R. §1.1117.

the License earlier this year, pursuant to a Commission-approved assignment in connection with Chapter 11 Bankruptcy proceedings before the United States Bankruptcy Court for the District of Delaware relating to the ORBCOMM System assets (the "Bankruptcy").² ORBCOMM LLC is a newly-formed company established with the intent of recovering the ORBCOMM System from the Bankruptcy to ensure to continued provision of service to customers located throughout the world.

Since acquiring the ORBCOMM System and the License, Petitioner has aggressively pursued the task of rescuing the ORBCOMM System from the Bankruptcy. Much progress has been made, and the future of the business appears quite promising. The Commission is assuredly well aware that rescuing a global telecommunications enterprise from bankruptcy in the current marketplace environment is, to say the least, *challenging*. Any bankruptcy recovery is a difficult undertaking, regardless of external market factors. In the instant case, the normal complications inherent to such a situation are exponentially exacerbated by the unanticipated epidemic of turmoil spreading across both the entire telecommunications industry, and the world economy in general. As the Commission is also well aware,³ these daunting challenges have only increased over the last year. Consequently, Petitioner is operating in one of the most difficult business environments ever faced by a global satellite service operator; probably even more adverse than that faced by its predecessor prior to the Bankruptcy.

² See *License Assignment Order and Authorization*, 17 FCC Rcd. 4496 (2002); *consummation*, Letter to Donald Abelson, Chief, FCC International Bureau, from Walter H. Sonnenfeldt, Counsel to ORBCOMM, Application File Nos. SAT-ASG-20010726-00068, SES-ASG—20010726-01401, SES-ASG—20010726-01397, 0050-EX-AL-2001, and 0053-EX-AL-2001 (filed May 3, 2002). See, also, *ORBCOMM Global, LP, et al.*, Chapter 11 Bankruptcy Proceedings, Case Nos. 00-3636 through 00-3643, United States Bankruptcy Court for the District of Delaware. By the above-referenced license assignment authorization ORBCOMM also took assignment of other FCC licenses associated with the ORBCOMM System United States ground segment issued under FCC Call Signs E940534 – E940538 & E990057 – E990061.

³ See, e.g., *FCC to Convene En Banc Hearing October 7th on Steps Towards Recovery in the Telecommunications Industry*, FCC News Release (released September 27, 2002).

Despite these unforeseen monumental challenges, ORBCOMM is proud to report that it has made remarkable progress. The ORBCOMM satellite constellation is operating more cost efficiently and with a higher total system availability than it ever has. The company has also succeeded in raising a substantial amount of seed money in one of the most constrained venture capital environments ever seen in recent memory. Petitioner is continually pursuing additional funding to support its ongoing capital requirements that cannot be satisfied from operating revenues. Along with its network of local service partners in other countries, Petitioner has been able to retain much of the customer base that existed prior to the Bankruptcy. After more than a year of diligent effort in a very difficult environment, the company is beginning to realize the prospect of positive growth in its business. Nevertheless, the company continues to operate on a very tight negative cash flow basis.⁴

Petitioner simply cannot afford to pay any filing fee in connection with its submission of the ORBCOMM Request without suffering financial hardship that could quickly lead to Petitioner being forced to substantially curtail or even completely discontinue its operations and the services it provides to its customers. Thus, it is not so much a question of whether Petitioner meets the fee waiver standard of financial hardship; it is a question of Petitioner's very survival. These are clearly "...extraordinary and compelling circumstances" "outweighing the public interest in recouping the cost of the Commission's regulatory services".⁵

⁴ A supporting 'Declaration of Don Franco', ORBCOMM LLC's Chief Financial Officer, the content of which is incorporated herein by reference, is concurrently being filed under separate cover, together with a request to withhold the subject document from public inspection pursuant to Section 0.459 of the Commission's Rules. These showings comport with the Commission's stated requirements under the instant circumstances. 47 C.F.R. §1.1117. However, should any other supporting information be requested by the Commission, ORBCOMM will promptly respond.

⁵ See, e.g., *Implementation of Section 9 of the Communications Act — Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year and Amendment of the Schedule of Application Fees and Rules*, 10 FCC Rcd. 12759 (1995), at ¶ 29.

For the above-stated reasons, Petitioner clearly meets the standard for a waiver of filing fees associated with the ORBCOMM Request. Given the continuing critical status of the emergence from bankruptcy of the ORBCOMM System, compelling Petitioner's payment of the subject filing fees would clearly not serve the public interest. In fact the Commission has found that these types of circumstances constitute an exemplary basis for grant of the waiver herein requested. Id.

Accordingly, the public interest would be well-served by grant of the fee waiver requested herein. Grant of the requested relief will allow the subject funds to be spent instead on maintaining and improving the operational status of the ORBCOMM System, and ensuring the continued provision of the important services it provides to the public.

For the above-stated reasons, good cause exists for the relief requested herein, and the public interest, convenience and necessity will be well-served by grant of the instant petition.

Respectfully submitted,

ORBCOMM LLC & ORBCOMM LICENSE CORP.

By: 
Walter H. Sonnenfeldt

WALTER SONNENFELDT & ASSOCIATES
14732 Jaystone Drive
Silver Spring, Maryland 20905
(301) 384 - 5699

Their Attorney

September 30, 2002